

**ORDINANCE NO. \_\_\_\_\_, SERIES 2007**

**AN ORDINANCE AMENDING AND RE-ENACTING VARIOUS SECTIONS OF THE LOUISVILLE METRO CODE OF ORDINANCES (LMCO) CHAPTER 50 RELATING TO SEWERS.**

**Sponsored By: Councilmen Downard and Blackwell**

**BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:**

**SECTION I:** LMCO Chapter 50 is hereby amended and re-enacted as follows:

Section

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- 50.01 Obstruction of sewers
- 50.02 Interference with construction of sewers
- 50.03 ~~Beargrass~~ Creeks, Streams and Drainageways
- 50.04 Mandatory connection to sewers
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- 50.06 Plan review

***Rates and Charges***

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## **GENERAL PROVISIONS**

### **§ 50.01 OBSTRUCTION OF SEWERS.**

(A)    No person shall permit or cause to be closed, stopped up, or otherwise obstructed, any sewer, catch basin, inlet, manhole, or other portion of any sewer or drain in Jefferson County, or do, or permit to be done, anything that will retard or prevent the free circulation of water, sewage, or air through such sewer, drain, or appurtenance.

(B)    No person shall place or throw any dead animal or any substance in or near any catch basin or sewer, whereby the flow of water through any sewer may become obstructed.

(C)    No person shall remove or damage any grate or cover over any sewer, catch basin, inlet, manhole or other portion of any sewer or drain in Jefferson County.

~~(D)~~    Violations of ~~this subsections (A) and (B) above involving substances in an amount less than or equal to the capacity of a standard 20 gallon container shall constitute littering; violations involving substances in greater amounts shall constitute dumping~~ violations of the Metropolitan Sewer District's (MSD's) Wastewater/Stormwater Discharge Regulations and MSD shall have authority to enforce subsections (A) and (B) pursuant to such regulations. Current Regulations are on file with MSD and are available on MSD's website at [www.msdlouky.org](http://www.msdlouky.org).

Penalty, see § ~~51.999~~50.99

***Cross reference:***    *Sewers as a nuisance, see § 96.41*

## **§ 50.02 INTERFERENCE WITH CONSTRUCTION OF SEWERS.**

(A) ~~Within 15 days after receiving notice, no~~ Upon receipt of notice, any person having buildings, structures, works, conduits, mains, pipes, tracks, or other physical obstructions in, over, or on the public streets or highways which interfere with or impede the progress of any sewerage system in the process of construction, shall ~~fail to~~ shift, adjust, accommodate, or remove the obstruction at his own cost and expense in accordance with such notice.

(B) Each day after ~~the expiration of 15 days in which any part~~ receipt of notice of such obstructions in which any part of the obstruction ~~referred to in the written notice~~ shall not have been shifted, adjusted, or removed in accordance with the notice shall constitute a separate offense.

Penalty, see § ~~51.999~~50.99

## **§ 50.03 BEARGRASS CREEKS, WATERWAYS AND DRAINAGEWAYS.**

(A) No person shall ~~trespass in or on any portion of Beargrass Creek which is located within Jefferson County, or the banks or walls thereof, where it has been improved;~~ throw into or place in the channel of any creek, stream or drainageway in Jefferson County any obstructions, rubbish, refuse matter, or materials or articles of any kind; or empty or cause to run into the channel any liquid substance whatsoever other than the natural surface draining of rain water; ~~deface the walls thereof, or paint, write, or post any advertising matter thereon; or damage the walls or bottom in any manner whatsoever.~~

(B) Violations of this section ~~involving matter in an amount less than or equal to the capacity of a standard 20-gallon container shall constitute littering; violations involving matter in greater amounts shall constitute dumping.~~ shall constitute violations of MSD's

Wastewater/Stormwater Discharge Regulations and MSD shall have authority to enforce this section pursuant to such regulations. Current regulations are on file with MSD and are available on MSD's website at [www.msdlouky.org](http://www.msdlouky.org).

Penalty, see § 504.999

**§ 50.04 MANDATORY CONNECTION TO SANITARY SEWERS.**

- (A) All owners of occupied ~~structures~~ ~~houses~~ in Jefferson County, situated on lots abutting a street, ~~or~~ alley, or public sewer easement in which there is a public sewer, shall connect all sanitary sewer ~~drain~~ pipes of such ~~structures~~ ~~houses~~ with such sewer. All connections need to be made in accordance with Kentucky State Plumbing Code and the regulations of the Division of Water. If there is conflict within these regulations the stricter shall apply.
- (B) Groundwater, rainwater, surface drainage, subsurface drainage, or yard drainage shall not be discharged through direct or indirect connections (downspouts, sump pumps) to a sanitary sewer, except as specifically permitted by MSD. Violations of this section shall constitute violations of MSD's Wastewater/Stormwater Discharge Regulations and MSD shall have authority to enforce this section pursuant to such regulations. Current regulations are on file with MSD and are available on MSD's website at [www.msdlouky.org](http://www.msdlouky.org).
- (C) No person, firm, corporation, public utility, municipality, public agency, or institution shall maintain, upon any original lot, subdivisional lot or parcel of ground, situated on any street, alley or road in Jefferson County, where there is a public sewer and water supply available for use of such unit, any system of disposal of human excrete except by

means of water closets connected with such sewer and water supply. It shall be the duty of the owner or owners of every lot, subdivisional lot or parcel of ground required to be connected with the public sewer, to so connect such lot or parcel within 12 months of notification that such sewer connection is available or as otherwise ordered by the Department of Public Health and Wellness or the Board of Health

Penalty, see § 501.999

#### **§ 50.05 DRY WELLS.**

No owner of any ~~structure~~ ~~house~~ shall keep or maintain any dry well on such lot for the purpose of ~~or draining~~ any privy matter or other foul or deleterious matter into it.

Penalty, see § 501.999

#### **§ 50.06 PLAN REVIEW AND INSPECTION.**

(A) MSD shall be responsible for plan review, approval and inspection of all public and private sanitary sewer and sewerage facility construction plans regulated by the Kentucky Division of Water;

(B) The Public Health and Wellness Department shall be responsible for plan review, approval and inspection of all plans for construction of on-site treatment systems that serve no more than one individual property, all holding tanks, and any other constructed sewerage components not reviewed by MSD.

### **RATES AND CHARGES**

#### **§ 50.20 AUTHORIZATION TO IMPOSE AND COLLECT RATES, RENTALS AND CHARGES.**

(A) That the Metropolitan Sewer District MSD is hereby authorized and empowered to impose, charge, and collect ~~the following amended schedule of~~ rates, rentals, and charges for

sewer service within Jefferson County and to prescribe the manner in which and time at which such rates, rentals and charges are to be paid, and may change the schedule from time to time as the district deems necessary, advisable or expedient and/or as otherwise permitted by law. Current rates, rentals and charges are maintained in MSD's Schedule of Rates, Rentals and Charges on file with MSD.

**§ 50.21 RATES, CHARGES AND FEES.**

~~—(A)— *Service charges.* Current rates are maintained on file with MSD.~~

~~—(B)— *Volume charges per 1,000 gallons.* Regular volume rates described below are calculated by using only 85% of the actual metered water used by residential customers, providing an automatic year-long 15% discount for lawn watering and other uses of water which does not enter the sanitary sewer system. Automatic volume rate discounts of 10% for commercial customers and 5% for industrial customers are also provided. The sewer only volume rates exclude these automatic discounts and are used for customers who are charged for only the water entering the sanitary sewer system as determined by monitoring systems.~~

~~——(1)—— Regular volume rate applicable to all water used and not meeting the requirements for the optional volume rate: \$ 1.12 per 1,000 gallons of volume billed; or~~

~~——(2)—— Optional (clean) volume rate available to customers whose average water use during any consecutive twelve month period exceeds 1,000,000 gallons per month. Such customers may, until such volume is less than 1,000,000 gallons per month, have the option of being charged the following optional volume rate for water used plus quality charges for total properly certified and approved BOD and SS loadings: \$0.69 per 1,000 gallons of volume billed.~~



~~———— (3) Sewer only volume rates applicable where billable volumes are based on either the wastewater discharged to the sewer system as determined by metering, or metered water use less exemptions approved by MSD for water not ultimately discharged to the sewer system as determined by separate metering:~~

~~———— (a) Residential. Current rates are maintained on file with MSD.~~

~~———— (b) Commercial. Current rates are maintained on file with MSD.~~

~~———— (c) Industrial. Current rates are maintained on file with MSD.~~

~~———— (C) Quality charges.~~

~~———— (1) Applicable to contributed wastewater strengths in excess of 250 mg/liter of biochemical oxygen demand (BOD) or 270 mg/liter of suspended solids (SS):~~

~~———— (a) \$0.173 per pound of BOD loading in excess of 250 mg/liter (or \$0.001443 per mg/liter per 1,000 gallons); and~~

~~———— (b) \$0.071 per pound of SS loading in excess of 270 mg /liter (or \$0.0005921 per mg/liter per 1,000 gallons).~~

~~———— (2) Any commercial, institutional or industrial customer who is required by MSD to provide certification of the strengths of its BOD and SS wastewater discharges must do so by the required due dates. Each certification is subject to approval by MSD and must be based on analytical sampling and testing procedures acceptable to MSD. In the event a customers certification is not approved by MSD, billings shall be based on BOD and SS loadings determined appropriate by MSD until such time as an acceptable certification is approved by MSD.~~

~~—— (3) MSD may require a customer to provide MSD with split samples of the customer's wastewater which are used for certification purposes.~~

~~—— (4) MSD retains the right to bill quality charges based on sampling and testing carried out by MSD personnel using MSD procedures and MSD's laboratory. MSD shall at all times have access to the premises of a customer for the purpose of determining appropriate quality charges.~~

~~—— (5) Businesses subject to significant fluctuations in their wastewater loadings due to the seasonal nature of their activities, or for other reasons, must provide certifications representative of their typical annual loadings.~~

~~—— (6) The renewal frequency for wastewater discharge certificates shall be in accordance with the renewal schedule determined by MSD.~~

~~—— (7) MSD may establish standard BOD and SS loadings for a specific customer class which shall be used to determine applicable quality charges, using the quality charge rates approved herein, for each customer within that classification as determined by MSD.~~

~~—— (D) *Flat rate for (single family) residential customers (without meters).* Applicable to any single family residential customer without a metered public water service: Current rates are maintained on file with MSD.~~

~~—— (E) *Bulk dumping charge.*~~

~~—— (1) Applicable to septic tank cleaners and other bulk dumpers: Current rates are maintained on file with MSD.~~

~~—— (2) After hours bulk dumping charge: Current rates are maintained on file with MSD.~~

~~—— (3) A deposit for credit customers may be required by MSD.~~

#### **§ 50.22 PENALTY CHARGE.**

A delinquent bill penalty shall be added to all wastewater service bills not paid by their due dates in accordance with the penalty policy in use by MSD. ~~the Louisville Water Company, MSD's billing and collection agent.~~

#### **§ 50.23 UNUSUAL INCIDENT CHARGE.**

Any business, firm, or individual introducing into MSD's sewer system a substance detrimental to MSD's sewers, wastewater treatment facilities, pumping facilities, or wastewater treatment processes, which result in abnormal costs for MSD, shall be charged and shall pay the actual total costs incurred as determined by MSD pursuant to its Wastewater/Stormwater Discharge Regulations. Current Regulations are on file with MSD and are available on MSD's website at [www.msdlouky.org](http://www.msdlouky.org).

#### **§ 50.24 DEBT SERVICE ADJUSTMENTS.**

(A) Whenever the Metropolitan Sewer District's (MSD's) net revenues are less than 1.10 times the debt service on MSD's outstanding revenue bonds for any consecutive six-month period, by order of the Board of MSD, the schedule of wastewater service charges shall be amended in order to maintain a 1.10 debt service coverage required by MSD's 1971 bond authorizing resolution which was approved by the City of Louisville Ordinance Number 86, series 1971, and by Ordinance No. 25, Series 1979 as amended by Ordinance No. 32, Series 1986, and Ordinance No. 152, Series 1979 as amended by Ordinance No. 388, Series 1986,

provided that the aggregate of such adjustments for any 12-month period shall not generate additional revenue from wastewater service charges in excess of 7%.

(B) The term ***NET REVENUES*** is defined as gross revenue from wastewater service charges less operating expenses and debt payments other than debt service payments on MSD's outstanding revenue bonds.

#### **§ 50.25 CONNECTION FEES.**

(A) A connection fee is applicable for the first connection to property which had not been previously assessed or otherwise charged or credited for the cost of the sewer serving the property: ~~Current rates are maintained on file with MSD.~~

(B) With payment of a connection fee, MSD will, ~~at its expense,~~ install one property service connection from the sewer to the easement or property line.

(C) Any additional connections to a property which paid a connection fee shall be installed by MSD at the owner's expense, and MSD shall require a deposit from the owner.

(D) If the property had been previously assessed for the cost of a sewer but not for the cost of a property service connection, or had not been otherwise charged for the cost of a property service connection, the connection fee shall not be applicable, but the owner must pay for the actual cost of the one connection, and MSD shall require a deposit from the owner.

(E) Connection fees shall not be applicable within the original City of Louisville Enterprise Zone. However, any new sewer extension or new connection within an Enterprise zone shall be installed at the owner's expense, and MSD shall require a deposit from the owner.

(F) MSD may allow property owners to pay connection fees in accordance with installment plans and at interest rates approved by the MSD Board. However, the connection fees shall be assessed against the properties pursuant to the assessment method described in KRS 76.172.

#### **§ 50.26 ACTUAL COSTS RESULTING FROM DETRIMENTAL DISCHARGES.**

Any customer discharging wastewater which contains toxic substances, grease, or other substances detrimental to the Metropolitan Sewer District's (MSD's) sewers, wastewater treatment facilities or wastewater treatment processes which creates an unusual additional cost to MSD shall be liable to pay for the actual costs incurred by MSD as a result of such discharges. Charges for recovery of unusual costs shall be in addition to wastewater service charges specified herein, and shall be in accordance with MSD Board policies, rules and regulations.

### **DRAINAGE SERVICE FEES**

#### **§ 50.30 ESTABLISHMENT.**

(A) MSD is hereby authorized and empowered to impose, charge and collect within Jefferson County the following drainage service charges in addition to all other rates, rentals and charges contained in MSD's Schedule of Rates, Rentals and Charges. (From City Ordinance 388, Series 1986, County Ordinance 32, Series 1986.)

(B) A system and structure of drainage service charges to be applied to all developed parcels of land within the ~~Metropolitan Sewer District~~ (MSD) drainage service area and other drainage service fees are hereby established in accordance with this ordinance.

#### **§ 50.31 DEFINITIONS.**

For the purpose of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**DEVELOPED.** The condition of real property altered from its natural state by the addition to or construction on such property of impervious ground cover or other manmade physical improvements that the hydrology of the property or a portion thereof is affected.

**DRAINAGE MASTER PLAN.** The plan for managing storm drainage and surface water runoff facilities and features within MSD's drainage service area and the drainage basins therein.

**DRAINAGE SERVICE AREA.** ~~The existing service area of the MSD defined by KRS 76.005(3), and any expansion thereof pursuant to KRS 76.175.~~ The drainage service area shall mean all areas within Jefferson County not including Anchorage, Jeffersontown, St. Matthews and Shively, except as those areas or portions thereof are included in the district area by agreement with MSD. The term “district area” as used in this definition shall mean the service area of MSD as defined in KRS 76.005(3)

**DRAINAGE SERVICE CHARGE.** The fee levied by the MSD upon all developed real property within the boundaries of the MSD's drainage service area as authorized by this amendment.

**EQUIVALENT SERVICE UNIT (ESU).** The measure of impervious ground cover for a typical single-family residential property and is used by MSD in assessing the drainage service charges for each parcel of property.

**IMPERVIOUS SURFACE.** Those hard surface areas either which prevent or retard the entry of water into the soil in the manner that such water entered the soil under natural conditions pre-existent to development, or which cause water to run off the surface in greater quantities or at an increased rate of flow than that present under natural conditions pre-existent to development,

including, without limitation, such surfaces as roof tops, compacted gravel, asphalt or concrete paving, driveways and parking lots, walkways, patio areas, storage areas or other surfaces which similarly affect the natural infiltration or runoff patterns existing prior to development.

**MSD.** The Metropolitan Sewer District.

**NON-SINGLE FAMILY RESIDENT PROPERTIES** or **PARCELS.** Properties or parcels which contain more than one residential structure or one residential structure with more than two residential dwelling units and institutional, commercial or industrial properties.

**RESIDENCE.** A building or structure or portion thereof, designed for and used to provide a place of abode for human beings. The term **RESIDENCE** includes the term **RESIDENTIAL** and **RESIDENTIAL UNIT** as referring to the type of or intended use of building or structure.

**SINGLE FAMILY RESIDENTIAL PROPERTY** or **PARCEL.** Any property or parcel which contains one structure with one or two residential dwelling units.

**SYSTEM.** The entire system of flood protection and stormwater drainage and surface water runoff facilities owned or leased by the MSD or over which the MSD has right of use for the movement and control of storm drainage and surface water runoff, including both naturally occurring and manmade facilities.

**UNDEVELOPED.** The condition of real property unaltered by construction or addition to such property by man of impervious ground cover or physical manmade improvements of any kind which change the hydrology of the property from its natural state.

## **§ 50.32 DRAINAGE SERVICE CHARGE.**

(A) A drainage service charge is imposed on every parcel of land within the drainage service area except for the following exempted properties:

(1) City-owned property where that incorporated city has entered into an interlocal drainage service agreement with the MSD providing for detention basin sites, easements, drainage rights-of-way or other assets of value comparable to applicable drainage service charges;

(2) Properties owned by the Metro Government, or their budgeted agencies, who have offset their drainage service charges by the dedication of drainage facilities and future considerations through concomitant cooperative agreements;

(3) MSD-owned property;

(4) Public roads;

(5) All undeveloped parcels of land.

(B) The following charges are hereby established and imposed for all parcels of real property within the drainage service area, excluding exempted properties:

(1) *Class A properties or single family residential.* The single family residential charge rate per month for each parcel having one or two residential dwelling units shall be the rate contained in MSD's Schedule of Rates, Rentals and Charges on file with MSD. ~~The single family residential charge rate shall be \$2.75 per month for each parcel having one or two residential dwelling units.~~ This flat rate fee is based on each single-family residential parcel



being equal to one ESU. The MSD shall determine the number of single-family residential parcels in the drainage service area and designate each as a single ESU irrespective of the size of parcel or the amount of impervious area on the parcel, until such time as the parcel is segregated or the use of the land is modified to other than single-family.

(2) *Class B or other parcels.*

(a) The charge for all other parcels within the drainage service area shall be based upon the number of square feet of measured impervious surface, as determined by MSD through aerial photography and surface feature evaluation processes, expressed in whole ESUs by rounding to the next highest ESU (an ESU has been determined to be 2,500 square feet of impervious surface). The charge for Class B properties shall be computed by multiplying the number of ESUs for a given parcel by the unit rate established by MSD of \$2.75 per ESU per month. Current rates are contained in MSD's Schedule of Rates, Rentals and Charges on file with MSD.

(b) Any owner of Class B property may request a drainage charge credit adjustment for approved on-site stormwater retention or detention facilities provided that:

1. The property owner remains responsible for all costs of operation and maintenance of the facility;
2. The facility has been constructed in accordance with all approved plans;
3. The owner has obtained the MSD required permits for the facility; and

4. MSD has access to the facility for purposes of inspecting for compliance with design, maintenance and operating standards.

(C) If MSD approves a drainage charge credit for on-site stormwater retention or detention facilities, the credit will be applied by reducing the number of billable ESUs by the percent of reduction in stormwater runoff due to such on-site facilities, as determined by the MSD. The net billable ESUs after such credit is applied shall be expressed in whole ESUs by rounding to the next highest ESU, and the adjusted drainage service charge shall not be less than 18% of the drainage service charge before the credit adjustment.

#### **§ 50.33 CERTAIN OTHER DRAINAGE FEES.**

The Board of MSD may establish fees for the review and approval of plans or designs of drainage facilities, and for the inspection of the construction of drainage facilities, all in accordance with KRS 76.085, and may establish policies for the sharing of the costs of developing regional drainage systems serving multiple developments/properties.

#### **§ 50.34 BILLING AND COLLECTION.**

(A) Drainage service charges shall be billed and made payable using the same frequencies and billing cycles used by the Louisville Water Company for its billing system. The amounts to be billed shall be included as additions to the billings of the Louisville Water Company for water and/or sewer service, or by separate billings and billing cycles for accounts not maintained by the Louisville Water Company.

(B) The owners, tenants or persons responsible for the payment of water service charges and/or sewer service charges shall also be responsible for the payment of drainage service charges for the same parcels except for multiple occupancy properties such as shopping centers,

apartments, condominiums, and the like, in which cases the MSD may either allocate the drainage service charges among the occupants of the parcel or may deem that a single billing to the parcel's owners, agent or association is appropriate. In either case, the billed party shall be responsible for payment of drainage service charges. For properties not billed by the Louisville Water Company for water service charges and/or sewer service charges, the owners of such properties shall be billed drainage service charges and shall be responsible for payment of same. In all situations, the owners of properties subject to drainage service charges shall be fully responsible for payment of the charges regardless of any other parties identified as also being responsible for payment of drainage service charges.

(C) When any drainage service charges remain unpaid for a period of 30 days after the amount becomes due and payable, the property, tenant and the owner thereof shall be deemed delinquent until such time as the charges are fully paid. The MSD may terminate or cause to be terminated public sewer, water and/or drainage services against the tenant or owner to obtain payment, all in accordance with KRS 76.090(4). A penalty shall be applied to delinquent drainage charges in the manner and at the rate established by MSD. Current rates are contained in MSD's Schedule of Rates, Rentals and Charges on file with MSD. ~~the same manner that penalties are applied to delinquent sewer and water charges by the Louisville Water Company.~~

#### **§ 50.35 DRAINAGE REVENUES; EXPENSES.**

All monies collected through drainage service charges and drainage fees authorized herein shall be separately identified and accounted for in MSD's financial records, and all expenses related to stormwater drainage and flood control shall be separately identified and accounted for by MSD. The debt service adjustment provision within MSD's existing schedule of rates, rentals

and charges is hereby amended by adding “and drainage service charges” following the term “wastewater service charges” where said term appears in said provision.

#### **§ 50.36 ADJUSTMENT OF CHARGES; APPEALS.**

(A) Any owner who considers that drainage service charges applied to the owner's parcel are inaccurate or otherwise disagrees with the determination may apply to MSD's Finance Director for a rate review, stating in writing the grounds for the adjustment. The Finance Director will review the case and report findings to the Executive Director. The Executive Director shall consider the complaint and staff recommendations and determine whether an adjustment is necessary to provide for reasonable and equitable application of the drainage service charge.

(B) Appeals of decisions made by the Executive Director may be brought before the MSD Board in writing with notice and substance of the appeal sent to the Board's secretary within 15 days after the owner receives the Executive Director's decision. Upon reviewing the documentation, the Board shall render a final decision.

### **CAPACITY CHARGE**

#### **§ 50.45 PURPOSE.**

MSD is the designated management agency for the implementation of the master plan for sewerage Jefferson County and must eventually provide capacity within the comprehensive public sewerage system for all developed properties within Jefferson County. New developments, even when using the MSD's existing capacity, contribute to future capacity needs. Therefore, the capacity charges shall be collected from developers of properties to help defray the future cost of providing the master plan sewerage facilities.

**§ 50.46 PAYMENT BY DEVELOPER.**

(A) When a developer of property wishes to provide sewer service by extension of or connection to MSD's system, the developer, in addition to providing and paying for sewerage facilities necessary for the development, shall pay a capacity charge in advance of connection to the MSD's wastewater treatment facilities. For developments served by MSD sewer extensions, the developer shall pay the applicable capacity charge at the time of execution of the sewer extension contract, or shall submit an irrevocable letter or credit from a local bank or other financial institution which guarantees MSD payment in full at the MSD's request after the sewers are installed and connected to MSD's system and before the MSD issues its formal acceptance of the sewer extensions.

(B) MSD may negotiate and execute agreements with developers whereby developers may construct and pay for regional sanitary sewer facilities that serve the developers' property and other property located within a region determined by MSD (Sewershed). The developer must submit plans for the proposed regional sanitary sewer facilities (Facilities) to MSD and MSD must approve such plans prior to construction. The developer also must receive approval from MSD that the Facilities' construction was in accordance with its prior approved plans and specifications. Developers must transfer right, title and interest of said Facilities to MSD at no cost. When other properties within the Sewershed are developed, MSD may charge customers located within that determined Sewershed, or other customers permitted by MSD to use such Facilities, Recapture Fees on behalf of the developers in order to recapture the cost expended by the developers in constructing such Facilities. MSD will calculate the Recapture Fees by determining the number of developable lots within the Sewershed and dividing it into the total final cost

of the Facilities. MSD will collect the Recapture Fees and, after retaining a reasonable administrative fee from the Recapture Fees, remit the balance of the Recapture Fees to the developers in accordance with the terms of the agreements and with this section.

#### **§ 50.47 CALCULATION.**

The capacity charge shall be calculated by multiplying the unit capacity charge by the gallons per day estimated to flow from a new development connecting to the MSD's system as determined by the MSD. The unit capacity charge (value per gallon) shall be calculated by dividing the MSD's net worth (system value) by the MSD's total system-wide design capacity. For any calendar year, the unit capacity charge shall be based on the MSD's net worth as reported in the annual audit report for the fiscal year ended the June 30 prior to the calendar year.

#### **§ 50.48 EXEMPTIONS.**

Capacity charges are not applicable to the following:

(A) Existing developed properties connecting to the MSD's system but previously served by another (non-MSD) sewer system or on-lot wastewater disposal system.

(B) Properties to be served by a new wastewater treatment plant to be owned by MSD and constructed and financed jointly by agreement between MSD and one or more developers; however, the prorated shares of the developer's capital costs, based on their estimated use of design capacity, shall not be less than the amounts MSD would recover by using the capacity charge calculations. Properties in the service area not party to the agreement will pay the capacity charge.

(C) Properties within an "Enterprise Zone" established pursuant to KRS Chapter 154.

(D) Properties owned by the Metro Government.

(E) Properties which connect prior to January 1, 1993 to an MSD sewer which was installed and available in an abutting right-of-way or easement as of January 1, 1987, provided that the properties were annexed into MSD's wastewater service area at the written request of the owner dated and received by the MSD prior to January 1, 1987, and provided that the properties are being developed, or have recently been developed, at the time of connection.

(F) Properties within the boundaries of the metropolitan area which, in 1946, transferred the then existing metropolitan sewerage system to the MSD at no cost to the MSD. Funds collected by the capacity charge shall be used to finance future sewerage expansion that will serve new development.

**~~§ 50.49 FUTURE SEWERAGE EXPANSION.~~**

~~—Funds collected by the capacity charge shall be used to finance future sewerage expansion that will serve new development.~~

**COMPREHENSIVE STORM WATER DRAINAGE AUTHORITY**

**§ 50.55 ESTABLISHMENT.**

(A) ~~There is hereby~~ The City of Louisville and Jefferson County established a Comprehensive Storm Water Drainage Authority coextensive with and under the Louisville and Jefferson County Metropolitan Sewer District ("MSD") with MSD having all powers, authority and approvals as set forth in the Agreement of Interlocal Cooperation ("Agreement") which is recorded in the Office of the Jefferson County Clerk at Book 5643, Page 0766.

(B) ~~Therefore~~ The power and authority possessed by the Metro Government Fiscal Court of Jefferson County in managing, maintaining, constructing, repairing, rehabilitating, acquiring, regulating, operating, inspecting, removing, improving, and funding public flood control and storm and surface water drainage services has been given ~~is transferred~~ to MSD pursuant to the terms of the Agreement.

(C) Flood, storm and surface water drainage systems, equipment, facilities, owned, controlled, leased by or dedicated to the City of Louisville, Metro Government, Fiscal Court of and Jefferson County ~~or~~ are dedicated to drainage uses in the public interest are transferred by lease to MSD pursuant to the terms of the Agreement.

~~—(D)—The County Judge/Executive of Jefferson County, Kentucky is hereby authorized and directed to execute on behalf of Jefferson County, Kentucky, the Agreement and Lease.~~

#### **§ 50.56 INCORPORATION OF RECITALS.**

The recitals are incorporated herein by reference as if fully set forth herein and are adopted as true and correct findings of fact by the parties.

#### **§ 50.57 DEFINITIONS.**

For the purposes of this Agreement, the words and phrases shall be defined as follows, unless the context clearly indicates or requires a different meaning:

**AGREEMENT.** The Interlocal Agreement entered into by the City of Louisville and Jefferson County and recorded in the Office of the Jefferson County Clerk at Book 5643, Page 0766. ~~This Agreement (that is, Jefferson County Ordinance 31, adopted and effective 12-19-1986).~~



**AVERAGE RESIDENTIAL IMPERVIOUS AREA.** The average square footage of impervious area on one and two family residential properties in the MSD service area as determined by sampling said one and two family residential properties.

**CITY.** The City of Louisville, Kentucky.

**CLASS A PROPERTIES.** One- and two-family residential properties.

**CLASS B PROPERTIES.** All other properties, including but not limited to apartment buildings having units for three or more families and institutional, commercial, industrial, agricultural, and governmental properties.

**COMBINED SEWER.** A sewer which serves as a storm sewer and a sanitary sewer.

**COUNTY.** The County of Jefferson, Kentucky.

**DEVELOPER.** A person, firm, partnership, corporation or other entity that excavates, builds or otherwise improves a specific parcel or tract of land.

**DISTRICT AREA.** The service area of MSD as defined in KRS 76.005(3).

**DRAINAGE SERVICE AREA.** The area being a present part of the district area as of the effective date of the Agreement. The drainage service area shall also mean ~~such unincorporated~~ all areas within Jefferson County not including Anchorage, Jeffersontown, St. Matthews and Shively, except as those areas or portions thereof are included in the district area by agreement with MSD. ~~and any area within Jefferson County containing all or any part of a city of the fifth or sixth class, as such area or areas are included within the district area and receive storm or~~

~~surface water drainage services or use the storm or surface water facilities of MSD. Drainage service area shall also mean portions of areas within cities of the second, third and fourth class, if any, as such areas are included in the district area by agreement with the MSD.~~

***EQUIVALENT SERVICE UNIT (ESU).*** The billing unit used in the formula for generating charges for properties. The ESU for all one- and two-family residential properties shall be one (1). The ESU for each Class B property is calculated by dividing the impervious area of a property by the average residential impervious area, and rounding to the next highest integer.

***EXISTING.*** Present or in effect as of the time of the adoption of this Agreement.

***FACILITIES.*** Various flood control, drainage works and storm water systems that include but are not limited to inlets, conduits, manholes, energy dissipation structures, channels, outlets, retention basins, detention basins, other structural components, ditches, floodwalls, basins, pipes, walls, channels, creeks, ponds, drainage easements, drainage rights-of-way, drainage dedications, and other interests in property used, dedicated, controlled, possessed, maintained or leased by the metropolitan area or MSD for drainage purposes, together with all appurtenances which connect or assist in drainage of water or flood control.

***IMPERVIOUS SURFACE.*** Surfaces on or in a lot or parcel of real property which substantially reduces the rate of infiltration of storm water into the earth, including but not limited to surfaces or buildings, roofs, compacted gravel, asphalt and concrete drives and walks, parking lots, patios, and other structures.

***METRO GOVERNMENT.*** Louisville/Jefferson County Metro Government.

**MSD.** The Louisville and Jefferson County Metropolitan Sewer District.

**PREMISES.** A lot and the building and other improvements situated thereon.

**SERVICE CHARGE.** A monthly charge for flood control and storm and surface water drainage services.

**STORM, STORM WATER, and SURFACE WATER.** As used in this Agreement are interchangeable terms.

**STORM SEWER or STORM DRAIN.** A sewer which carries storm waters, surface runoff, wash waters and drainage, but which excludes sanitary sewage and industrial waste other than unpolluted cooling water.

**STORM WATER SYSTEMS or STORM WATER DRAINAGE.** All human-made facilities, structures, and natural water courses used for collecting and conducting storm water to, through and from drainage areas to the points of final outlet, including but not limited to any and all of the following: inlets, conduits, appurtenant features, canals, creeks, channels, catch basins, ditches, streams, gulches, gullies, flumes, culverts, siphons, retention or detention basins, dams, floodwalls, levies, and pumping stations.

#### **§ 50.58 ESTABLISHMENT OF DRAINAGE AUTHORITY.**

MSD shall have all authority, powers and abilities held by Metro Government ~~the city and county~~ relating to flood control and storm and surface water drainage systems and facilities and construction and maintenance of said systems and facilities and funding for the facilities, and control over all said facilities within its district area and within its drainage service area as provided for herein.

**§ 50.59 PURPOSES OF ESTABLISHING DRAINAGE AUTHORITY.**

(A) The purposes of the establishment of a drainage authority coextensive with and under the control of MSD is for MSD to take possession, control, use and domination of and over all storm and surface water drainage facilities and systems of the Metro Government, to be responsible for maintenance of all storm water facilities, to improve, manage, operate and repair storm water facilities, to provide for effective management and financing of a storm water system within Jefferson County, to provide methods for irrigating the damaging effects of uncontrolled and unplanned storm water runoff, to improve the public health, safety and welfare by providing for the safe and efficient capture and conveyance of storm water runoff and the correction of storm water problems, to authorize the establishment and implementation of a master plan for storm drainage including design, coordination, construction, management, operation, maintenance, inspection and enforcement, to establish reasonable storm water service charges based on each property's contribution of storm water runoff to the system and use of MSD's facilities and services to real property and to encourage and facilitate urban water resources management techniques including detention of storm water runoff, minimization of the need to construct storm sewers, and the enhancement of the environment.

(B) In order to accomplish such purposes, a storm water service charge shall be made on all real property within Jefferson County and included in the district area or drainage service area. The primary consideration in setting the service charge for all real property served by MSD's facilities (including the facilities assigned, transferred, leased or subleased to MSD), shall be each property's contribution to runoff.

(C) Service charges for all single-family residential property shall be uniform. MSD may give consideration to specific or unusual service requirements of some properties, and special and general benefits accruing to or from properties as a result of providing their own storm water management facilities.

(D) MSD's storm water service charge shall be fair and reasonable and bear a substantial relationship to the cost of providing service and facilities. Rate studies shall be conducted periodically by MSD.

(E) Service charges for residential properties of two or fewer dwelling units shall reflect the relatively uniform effect that residential development has on runoff and services provided by storm water facilities of MSD. Large residential lots generally have a lower overall intensity of development than small residential lots because a lesser percentage of larger lots is covered with hard surfaced area. The effect of large residential properties on storm water runoff and service provided by MSD's facilities is lowered by less imperviousness. Multi-family residential properties having three or more dwelling units and properties in land uses other than residential shall pay according to the amount of storm water runoff and services provided by the facilities of MSD as computed by multiplying the number of ESU's times a charge per ESU.

(F) An appeal and service charge adjustment process shall be created and employed by MSD to review storm water charges when unusual circumstances exist which alter runoff characteristics or when either service or benefit varies from normal conditions or when computation of ESU is disputed.

#### **§ 50.60 FINANCING.**

The manner of financing the purposes of this Agreement shall be by the charging by MSD for flood control and storm and surface water services in accordance with a schedule of rates and charges.

#### **§ 50.61 BUDGET.**

MSD shall establish and maintain a budget for the purposes of providing flood control and storm and surface water facilities and systems and services and to operate, repair, extend and improve said storm and surface water facilities and systems and shall prepare its budget in accordance with the estimated revenues to be derived from the schedule of rates and charges imposed by MSD for the furnishing of flood control and storm and surface water services, systems and facilities.

#### **§ 50.62 DURATION.**

The duration of this Agreement shall be for a term of 50 years and renewed for a like term unless one of the parties to the Agreement gives written notice to the other parties of an intent to terminate. Said notices must be given at least one year but not more than three years prior to the expiration of the original term of this Agreement.

#### **§ 50.63 TERMINATION.**

The Agreement may be completely terminated ~~by upon the unanimous consent of the Metro Government. In the event the Metro Government terminates agrees to a termination of the Agreement, all property transferred from the Metro Government pursuant to the terms of this Agreement shall be returned to the Metro Government original transferor upon such termination of the Agreement. MSD shall be entitled to retain all property acquired by MSD that was not~~

initially transferred to MSD by the City of Louisville, Jefferson County, or Metro Government. The Metro Government agrees that, in the event of termination, the Metro Government shall make adequate provision for payment of annual debt service on all outstanding debt issued by MSD for drainage purposes by MSD's continued imposition of service charges to retire the debt by MSD, said service charges to be approved by the Metro Government.

**§ 50.64 GRANT OF AUTHORITY OVER STORM AND SURFACE WATER DRAINAGE.**

MSD is granted the authority to plan, acquire, improve, construct, develop, install, modify, manage, operate, maintain, repair, replace, control, demolish, abandon, regulate, employ and fund public flood control and storm and surface water systems within the district and drainage service area, personnel, equipment and facilities and associated services and activities necessary for the collection, control, treatment and disposal of storm and surface water in a safe, proper and efficient manner and is granted the authority to fund flood control and storm and surface water services, systems and facilities by fixing rates, fees and charges throughout the district area and drainage service area as herein elsewhere provided.

**§ 50.65 TRANSFER OF AUTHORITY.**

All power and authority possessed by the Metro Government in managing, maintaining, constructing, repairing, rehabilitating, acquiring, regulating, operating, inspecting, removing, improving, and funding public flood control and storm and surface water facilities and systems and services is transferred to MSD and to the extent legally permissible MSD is designated as the exclusive agency responsible for public surface flood and storm water services throughout the drainage service area and district area.

#### **§ 50.66 TRANSFER OF DRAINAGE FACILITIES.**

All flood, surface and storm water systems, equipment, facilities, owned, controlled, leased by or dedicated to the Metro Government or dedicated to drainage uses in the public interest are leased to MSD, granting MSD complete possession, use, custody, control and domination of and over all such systems, equipment and facilities. Such leases are to be entered into simultaneously with execution of this Agreement, said leases being attached hereto and made an exhibit to this Agreement.

#### **§ 50.67 DRAINAGE MASTER PLAN.**

(A) MSD will, on a cooperative-basis with the Metro Government, prepare and adopt a storm and surface water drainage master plan for a system of storm and surface water services, repairs, improvements and maintenance. The plan will include plans for the acquisition, improvement, construction, inspection, development, installation, modification, management, operation, maintenance, repair, replacement, control, demolition, abandonment and regulation of:

- (1) Public storm and surface water drainage services, systems and facilities;
- (2) Collection, treatment, disposal or elimination of storm and surface water;
- (3) Control of storm and surface water drainage;
- (4) Storage and use of storm and surface water drainage;
- (5) Storage of storm and surface water to regulate flows within drainage systems or facilities or receding waters;



(6) Facilities to prevent the overflow and flooding of storm and surface water onto real property;

(7) The elimination or reduction of damage from flooding;

(8) Correction of water conditions that may jeopardize public health, safety or welfare.

(B) The Master Plan and revisions, as needed, shall be submitted to the Metro Government for their review and approval.

**~~§ 50.68 TRANSFER OF EMPLOYEES.~~**

~~—(A)—Metro government employees who are employed in full-time employment in the capacity of providing surface water drainage services shall be transferred to MSD. All such employees transferred shall retain their seniority and shall carry over accumulated sick leave and vacation up to the maximum allowed MSD employees and the use of said accumulated benefits shall be in accordance with the regulations of MSD; provided, however, that the amount of transferred benefits per employee which MSD will recognize shall be listed on Exhibit A hereto (that is, to Jefferson County Ordinance 31, adopted and effective 12-19-1986). After the transfer, such employees shall be entitled to receive only those benefits provided by MSD and shall be governed by MSD's employment practices. MSD shall use its best efforts to place such transferred employees into positions of comparable salary classification and duties.~~

~~—(B)—Employees of the Metro Government who, as a result of the execution of the Agreement, are left without full-time duties and are subject to lay-off by the Metro Government pursuant to the applicable collective bargaining agreement, shall be offered employment by MSD. All such employees hired by MSD shall be granted seniority for city service and granted~~

~~sick leave and vacation up to the maximum amount allowed MSD employees and the use of said accumulated benefits shall be in accordance with the regulations of MSD. Upon hiring, such employees shall be entitled to receive only those benefits provided by MSD and shall be governed by MSD's employment practices. MSD shall use its best efforts to place such hired employees into positions of comparable salary classification and duties.~~

#### **§ 50.69 TRANSFER OF DRAINAGE PROPERTY INTERESTS.**

(A) The City of Louisville and Jefferson County Metro Government ~~hereby transferreds~~ and ~~assigneds~~ by ~~leaseing~~ or ~~subleaseing~~ to MSD all use, custody, control and domination of and over all storm water system facility, including but not limited to all ditches, inlets, headwalls, outlets, basins, floodwalls, pipes, channels, creeks, ponds, easements, rights-of-way, dedications, and other interest in personal and real property used, dedicated, controlled, possessed or maintained by the City of Louisville and Jefferson County Metro Government for drainage purposes, together with all appurtenances which assist or connect the drainage system or facilities. Such leases or subleases ~~were~~ are to be entered into simultaneous with execution of ~~the this~~ Agreement, said leases being recorded in the Office of the Jefferson County Clerk at Book 5643, Page 0823, and Book 5643, Page 0804, ~~attached hereto (that is, to Jefferson County Ordinance 31, adopted and effective 12-19-86) and made an exhibit to this Agreement.~~

(B) The Metro Government hereby transfers to MSD all obligations arising under the "Assurances" consummated between the Metro Government and the United States Government regarding the Louisville, Kentucky Local Protection Project and the County of Jefferson, Kentucky and the United States Government regarding the Southwestern Jefferson County, Kentucky Local Protection Project and the "assurances" regarding the Mill Creek (Jefferson County, Kentucky) Channel Improvement Project. MSD, pursuant to this transfer, will maintain

and operate all the work on each of the aforementioned projects after completion in accordance with regulations prescribed by the Secretary of the Army.

(C) The Corps of Engineers will retain the right of review and approval of any work proposed within the right-of-way of the Local Protection Project as well as any work proposed on the flood control works prior to the initiating of said work. "Work" includes any proposed improvement, excavation, construction or alteration.

(D) MSD shall provide to the Corps of Engineers a copy of a semi-annual report regarding the status of all appurtenances associated with the Local Protection Projects.

#### **§ 50.70 GRANT OF EASEMENT.**

For the term of this Agreement, the Metro Government grants to MSD an irrevocable easement, license, right and privilege to construct, erect, operate, modify and maintain in, repair, replace and remove, upon, along, above, over and under the streets, alleys and public places of the Metro Government such drainage facilities and systems deemed by MSD necessary for the operation of a comprehensive drainage system. "Street" shall mean the surface of and the space above and below any public street, highway, freeway, bridge, land pass, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive or other public right-of-way, including utility or drainage easements or rights-of-way or other interests in property for drainage and flood control and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the Metro Government. After termination of the Agreement, MSD shall retain the right to operate, maintain, modify, repair and replace any facilities, systems and equipment which MSD constructs or erects during the operation of the lease.

**§ 50.71 RESPONSIBILITY FOR DRAINAGE SERVICES.**

(A) MSD shall have responsibility for operation and maintenance of public storm drainage facilities in the drainage service area and district area and the Metro Government transfers such responsibility and facilities to MSD, including but not limited to:

(1) All public ditches, pipes, and drainage structures and channels except those outside the drainage service area and those specifically the responsibility of the Kentucky Department of Transportation. Said drainage structures are understood to include boxed culvert and pipe, but not highway nor roadway bridges. Storm drainage facilities include public storm water catch basins except those maintained by the Kentucky Department of Transportation. Storm drainage facilities include all publicly dedicated storm water retention basins and include the floodwall and flood pumping station system.

(2) MSD shall monitor the design, operation, maintenance, inspection, construction and use of all storm sewers, storm drains and storm water facilities in the drainage service area. MSD shall have exclusive jurisdiction for the design and construction of public storm water facilities in the drainage service area and shall inspect, operate and maintain such facilities.

(B) MSD shall have exclusive jurisdiction for the inspection, maintenance, repair, removal, construction and operation of drainage facilities on all Jefferson County streets, boulevards, alleys, viaducts, sidewalks, curbs, street crossing, grade separation and other public ways and easements, and all drains, ditches, culverts, canals, streams, levees, tunnels and appurtenances thereof.

## **§ 50.72 ROUTINE AND REMEDIAL MAINTENANCE.**

MSD shall provide for inspection and routine maintenance of storm and surface water drainage facilities. Maintenance may include catch basin cleaning, grating, and casting repair, inlet and outlet structure repair, channel clearing, erosion repair, and other incidentals. MSD shall provide for remedial maintenance of facilities based upon the severity of storm water problems and potential hazard to the public.

## **§ 50.73 RULES AND REGULATIONS.**

In order to accomplish the purpose of this Agreement to protect the drainage facilities, improvements and properties owned by MSD, the Metro Government, to secure the best results from the construction, operation, and maintenance thereof, and to prevent damage and misuse of any of the drainage facilities, improvements or properties within the drainage service area, MSD may make and enforce regulations and rules that are necessary and reasonable which include but are not limited to the following:

- (A) To prescribe the manner in which storm sewers, ditches, channels, and other storm water facilities are to be designed, installed, adjusted, used, altered or otherwise changed.
- (B) To prescribe inspection and other fees permitted by this Agreement.
- (C) To prescribe the manner in which such facilities are operated.
- (D) To facilitate the enforcement of this Agreement.
- (E) To prescribe the collection procedures and timing of service charge bills.

(F) To protect the drainage facilities, improvements and properties controlled by MSD and to prescribe the manner of their use by any public or private person, firm or corporation.

(G) To protect the public health, safety and welfare.

#### **§ 50.74 PLAN REVIEW.**

(A) MSD shall be responsible for all drainage plan reviews for all development in Jefferson County, including responsibility for enforcement of the Flood Plain Ordinance. Any person or organization removing, constructing, enlarging, altering, repairing, relocating, or demolishing a storm sewer, natural water course, or other drainage facility, must first file an application and obtain a permit from MSD.

(B) Permits are required and may be granted by MSD for the following improvement categories:

(1) Connection into the public storm water system, except unimproved creeks or streams.

(2) Improvements which are or will become public facilities.

(3) Improvements within dedicated but unimproved street rights-of-way.

(4) Improvements which require detention or retention facilities.

(C) Plans for all improvements made within Jefferson County that require storm water facilities or changes or alterations to existing storm water facilities or which use the facilities of MSD must be submitted prior to construction or alteration to MSD for review and approval.

(D) Every improvement shall be provided with a storm water system capable of handling storm waters flowing unto the improvement site from other areas, as well as storm water from the site itself. The drainage system shall be designed to discharge into a water course, drainage channel or other storm water facility. MSD shall develop rules and regulations and guidelines concerning development or additions to property.

#### **§ 50.75 FUNDING.**

Funding for MSD storm water activities shall include but not be limited to:

- (A) Storm drainage service charge;
- (B) Permit and inspection fees;
- (C) Direct charges. This charge will be collected from owners and developers for the cost of designing and constructing storm water facilities and administrative costs and related expenses where MSD designs and/or constructs or contracts for the construction of such facilities.
- (D) Other income obtained from federal, state, local and private grants or revolving funds.

#### **§ 50.76 CAPITAL IMPROVEMENTS.**

MSD will implement a capital improvements program in accordance with the drainage master plan to be funded through revenue bond issues and service charges. ~~MSD shall submit its capital improvement program which lists the capital improvements to the Metro Government for their approval. Upon approval of the capital improvements program, With the exception of bond issues,~~ MSD shall have complete authority to proceed with its plan of financing which may include the issuing of bonds, awarding of contracts, acquisition of property and construction of said projects that may be located in the drainage service area and district area, and no other

approval will be required. MSD shall continue to proceed with all pending projects to the extent interim funding is available and may issue revenue bonds for financing projects in the capital improvement program, to the extent necessary but subject to the availability of funds.

#### **§ 50.77 DRAINAGE RESPONSE SYSTEM**

MSD will operate and maintain a complaint response system in order to assure effective and timely response to all surface and storm water drainage complaints and shall regularly and timely issue reports to the Metro Government as to the number and type of drainage complaints received and the response made to the complaints by MSD.

#### **§ 50.78 ANNUAL REPORT.**

MSD will issue at least annually a report to the Metro Government regarding the status of flood control, and storm and surface water drainage services and shall respond in a timely manner to drainage issues which the Metro Government may bring to the attention of MSD.

#### **§ 50.79 DRAINAGE LIAISON.**

The Metro Government shall designate a representative to be liaisons with MSD relating to all flood control and storm and surface water drainage issues.

#### **§ 50.80 TECHNICAL INFORMATION.**

The Metro Government shall provide to MSD copies of all as-built plans, drainage studies, evaluations, surveys, maps, contracts and agreements, status of work in progress and other data related to flood control and storm and surface water drainage facilities.

#### **§ 50.81 LIABILITIES.**

The transfer of surface and storm water responsibility, facilities, authority and personnel to MSD by the Metro Government, does not include any financial obligations or other obligations,



including but not limited to pending legal actions that arose or are pending prior to or on the date of the effective date of this Agreement.

#### **§ 50.82 STORM DRAINAGE SERVICE CHARGE.**

MSD is authorized to impose a storm drainage service charge for the furnishing of flood control and storm and surface water drainage services to all real property located within the drainage service area and district area and served by the facilities of MSD and is authorized to impose a storm drainage service charge on each lot, parcel or other unit of such real property within the drainage service area and district area and the owner thereof, excepting only public streets, highways, boulevards, alleys, viaducts, sidewalks, curbing, street crossing, grade separation and other public ways. The service charge to property that has existing storm water detention facilities, may be reduced as determined by MSD, in accordance with generally accepted engineering standards and practices to more accurately reflect the contribution to runoff from the property and the service provided by the facilities of MSD to such property. The detention facilities must be in accord with the hydrologic, hydraulic and structural design requirements of the rules and regulations as may be adopted from time to time by MSD. Facilities of a temporary nature will not be allowed a decrease in their charges.

#### **§ 50.83 CLASSIFICATION OF PROPERTY FOR SERVICE CHARGES.**

There shall be two classifications of property for determination of storm drainage service charges as follows:

- (A) Class A - One and two family residential properties.
- (B) Class B - Multi-family (three families or more) residential property and non-residential property.

#### **§ 50.84 RATES.**

(A) The rates for each property shall be computed by multiplying the number of ESU's times a charge per ESU as follows:

(1) ~~Initial e~~Charge. The ~~initial~~ charge per ESU shall be ~~\$1.75~~ set forth in MSD's Rates, Rentals and Charges.

(2) Class A Properties. All Class A properties shall be billed for one ESU.

(3) Class B Properties. All Class B properties shall be billed a service charge computed by multiplying the number of ESU's on a property times the rate per ESU.

(B) The storm drainage service charge shall be subject to approval by the Metro Council, pursuant to KRS 76.090. MSD and the Metro Government agrees to pay storm drainage service charges according to the rate schedule set out at subsection (A) above. MSD and the Metro Government shall approve a schedule of rates, rentals and charges including this charge but shall pay the charge effective January 1, 1987.

#### **§ 50.85 COLLECTION OF STORM DRAINAGE SERVICE CHARGE.**

The storm drainage service charge shall be paid by the owner of each lot or parcel which is subject to the charge on a periodic basis in accordance with rules and regulations established by MSD. The payment of the service charge shall be the responsibility of the tenant if the tenant is responsible for payment of charges for public water use, or the responsibility of the owner if the owner is responsible for payment of charges for public water use. The owner shall also be responsible for service charges levied against vacant property and for all service charges which are delinquent.

#### **§ 50.86 ADJUSTMENT OF CHARGE; APPEAL.**

(A) Persons who consider the storm drainage service charges applicable to their lot or parcel to be unjust or inequitable may apply to MSD for adjustment thereof, stating in writing the grounds of the complaint. The complaint shall be considered by appropriate MSD staff and their recommendations delivered to the Executive Director of MSD. The Executive Director shall determine whether an adjustment of the charges for any such lot or parcel is necessary to provide for the just and equitable application of the storm water drainage charge and adjust the charge, if appropriate.

(B) An appeal may be taken from the decision of the Executive Director to the Board of MSD with notice and substance of the appeal to be sent to the Secretary of the Board within 15 days after receipt of the charge.

(C) MSD may promulgate reasonable procedures to implement this section.

#### **§ 50.87 DELINQUENT ACCOUNTS.**

When any storm and surface water drainage rates, fees, or charges remain unpaid for a period of 30 days after the same become due and payable, the property, the tenant and the owner thereof, shall be deemed delinquent until such time as all rates, fees, and charges are fully paid; and MSD may terminate public sewer, water and drainage services to that property and pursue its legal remedies against the tenant or owner to obtain payment. A penalty shall be applied to delinquent drainage charges in the manner and at the rate established by MSD. Current rates are contained in MSD's Schedule of Rates, Rentals and Charges on file with MSD. ~~fees and charges, in the same manner penalties are applied to delinquent sewer and water charges by the Louisville Water Company, who will be MSD's billing and collection agent for drainage fees.~~

#### **§ 50.88 FLOODING, LIABILITY.**

Floods from storm water runoff may occasionally occur which exceed the capacity of storm drainage facilities constructed, operated or maintained by funds made available. This Agreement does not imply that property subject to the fees and charges established herein will always be free from flooding or flood damage, or that storm water systems capable of handling all storm events can be cost-effectively constructed, operated or maintained. Nor shall this Agreement create a liability on the part of, or cause of action against, any of the parties or employees thereof for any flood damage that may result from such storms of the runoff thereof. Nor does this Agreement purport to reduce the need or the necessity for obtaining flood insurance.

#### **§ 50.89 BILLING.**

The Metro Government agrees that MSD shall begin charging for the services provided for in this Agreement on January 1, 1987. The Metro Government agrees that they will use their best efforts to cooperate with MSD in having the Louisville Water Company provide at its cost billing services to MSD.

#### **§ 50.90 EXPANSION OF DRAINAGE SERVICE AREA.**

MSD shall proceed with the development and implementation of a plan and procedure to expand MSD's drainage service area for performing storm and surface water drainage services in all areas that are not presently within the district area for the purpose of receiving drainage services.

#### **§ 50.91 REVENUE BONDS AND DEBT SERVICE ADJUSTMENTS.**

In addition to any other methods MSD may have for the issuance of revenue bonds, it is agreed that revenue bonds may be issued by MSD in accordance with the provisions of KRS 65.270 subject to the approval of such bonds by the Metro Council.

#### **§ 50.92 RETRANSFER OF AUTHORITY AND PROPERTY.**

Notwithstanding anything in this Agreement to the contrary, the parties hereto agree that, in the event a final and non-appealable decision is rendered by a court of competent jurisdiction that the storm drainage service charge or drainage service charges contained in MSD's schedule of rates, rentals and charges levied by MSD is unlawful, unconstitutional or for any reason not legally collectable or enforceable by MSD for any reason whatsoever in regards to any property whatsoever, then, if the Board of MSD, in its sole discretion decides that the aforesaid decision impairs the feasibility of MSD to continue performance of this Agreement, this Agreement shall be null and void and all authority shall be vested with the Metro Government to the extent that authority was transferred in this Agreement, and MSD shall be released from all obligations contained in this Agreement, and MSD shall reconvey all property to the Metro Government, which was conveyed by terms of this Agreement or by leases.

#### **§ 50.98 SEVERABILITY.**

If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

#### **§ 50.99 PENALTY.**

A violation of Section 50.04 (A) and (C), 50.05, 50.06, or a failure to perform any of the duties imposed by these Sections, shall be enforced by the Department of Public Health and Wellness as provided in its rules and regulations, as may be amended. Each day of violation and/or non-compliance shall constitute a separate violation.

**SECTION II:** This Ordinance shall take effect upon its passage and approval.

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Kathleen J. Herron  
Metro Council Clerk

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Rick Blackwell  
President of the Council

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Jerry E. Abramson  
Mayor

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Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Irv Maze  
Jefferson County Attorney

BY: \_\_\_\_\_

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LMCO 50 Sewers ROC bkn BE MSD changes Draft 1 dated 051707.doc	5-17-07
LMCO 50 Sewers ROC bkn BE MSD changes Draft 2 dated 052307.doc	5-23-07
LMCO 50 Sewers ROC bkn BE MSD changes Draft 2 dated 052307 from Babs by Brian.doc	6-4-07
LMCO 50 Sewers ROC bkn BE MSD changes Draft 3 dated 060607 from Babs by Brian.doc	6-6-07
LMCO 50 Sewers ROC Draft 4 dated 060707 from Babs for MSD by Brian.doc	6-7-07
LMCO 50 Sewers ROC Draft 5 dated 060707 from Babs for MSD by Brian.doc	6-7-07
LMCO 50 Sewers ROC Draft 6 dated 062007 from Paula of MSD for BE, Judy by Brian.doc	6-25-07
LMCO 50 Sewers ROC Draft 7 dated 071707 bkn OK by MSD Paula,Adm. BE, Health Judy.doc	7-17-07